> I fail to see how the deliberate and unlawful acts of the Commission, authoritatively invalidated by the Ohio Supreme Court, can constitute a legislative policy pronouncement that now deserves the benefit of deference . . . [The Commission's plan imposed by the majority] does not express the policies of the state . . . [I]t was an ultra vires enactment that the Ohio Supreme Court voided because it directly contravened state policies . . . Our deference was owed to the people's clear command that redistricting is to be fair, bipartisan, and transparent—not to the Commission's invalidated decisions to prioritize partisan favoritism over constitutional strictures.[139]

The dissenting judge concluded that, while a court-drawn map was within the court's remedial power,[140] given the timing constraints, the court instead should have imposed the map drawn by the independent mapmaker as the "closest embodiment of legitimate state policy."[141]

Rather than understanding, as the dissenting judge did, that the State Supreme Court ruling on state constitutional grounds authoritatively invalidated the map, the *Gonidakis* the two-judge majority posed the following question in their opinion: "are we required to favor the decision of one organ of state government over another?"[142] Treating the state judiciary as simply another state branch is a significant mischaracterization of the role of a state supreme court in reviewing the state constitutionality of state legislation: "The legislature [or other mapmaking body] is created by the state constitution, so it must be limited by it."[143] It is the well-established and unique role of the state supreme court to interpret and enforce state constitutional law, voiding state legislative acts that conflict with the state constitution.[144] The Supreme Court has held that when a state court imposes a redistricting remedy, "the elementary principles of federalism and comity embodied in the full faith and credit statute, 28 U.S.C. § 1738, obligate [a] federal court to give [a state court's] judgment *legal effect*, rather than treating it as simply one of several competing legislative redistricting proposals available for the District Court's choosing."[145] Although, in *Gonidakis*, the state supreme court was unable to impose a remedy, the "principles of federalism and comity"[146] should mandate that a federal court give a state supreme court's judgment invalidating a redistricting plan its proper legal effect, rather

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[139] *Id.* at *34, *39 (citations omitted).

[140] *Id.* at *38.

[141] *Id.* at *39.

[142] *Gonidakis*, 599 F. Supp. 3d at 673.

[143] Matt Vasilogambros & Ethan Edward Coston, *Contentious Fringe Legal Theory Could Reshape State Election Laws*, PEW (Mar. 18, 2022), https://perma.cc/PPL9-37XV (quoting Professor Carolyn Shapiro).

[144] *See, e.g.*, Mullaney v. Wilbur, 421 U.S. 684, 691 (1975) ("[T]he Court [ ] repeatedly has held that state courts are the ultimate expositors of state law, and that we are bound by their construction . . ." (citing Murdock v. City of Memphis, 87 U.S. (20 Wall) 590 (1874); Winters v. New York, 333 U.S. 507 (1948)); CHARLES GROVE HAINES, THE AMERICAN DOCTRINE OF JUDICIAL SUPREMACY 60 (1914).

[145] Growe v. Emison, 507 U.S. 25, 35–36 (1993).

[146] *Id.* at 35.

than treat the unconstitutional redistricting plan as a valid plan available for choosing.

As such, when a state court invalidates a map as unconstitutional under the state constitution, a federal court should not lean on a state constitution's delegatory provisions to flaunt that critical check. The *Gonidakis* majority placed undue emphasis on the legislative preferences expressed by the mapmaking body over a higher source of state law: the state constitution. It escaped this uncomfortable truth by pointing to the state constitution's express allocation of mapmaking power to the Commission. But this logic does not hold up. The Supreme Court recognizes that a veto nullifies the deference owed to a map—largely because the Court recognizes state constitutional checks on state legislative power as controlling. [147] Therefore, a state judiciary striking down a reapportionment plan—exercising its state constitutional check upon a state legislature of enforcing the state constitution—must have at least equal nullifying effect.

Further, a map stricken by the state court as unconstitutional is potentially even more objectionable than a vetoed plan. A vetoed plan is procedurally defective, but it does not necessarily conflict with the state constitution's substantive provisions that provide commands and controls for electoral maps.[148] In contrast, a redistricting plan struck down as unconstitutional by a state court is confirmedly and independently incongruent with the redistricting policies as proffered by the highest body of state law: the state constitution. Therefore, a lower federal court, bound by the state supreme court's interpretation of the state constitution, [149] beyond merely not owing deference to the plan, should not use its remedial powers to impose the overturned plan. To do otherwise "disarms the state Supreme Court from policing its own Constitution."[150] Thus, there must be no "recently enacted plan" that a federal court owes deference in a state-judiciary-derived intrastate stalemate, and, in fact, imposing such a stricken map presents an even larger affront to state policy.

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[147] *Beens*, 406 U.S. at 195 (citing Duxbury v. Donovan, 272 Minn. 424, 442 (1965) (holding that "a qualified veto was put in the [state] constitution as a check upon the power of the legislature to redistrict and apportion"))

[148] See *supra* Section IV(D)(2).

[149] *See, e.g.*, Minnesota v. Nat'l Tea Co., 309 U.S. 551, 557 (1940) ("It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions."); *see also* Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482, 488 (1976) ("We are, of course, bound to accept the interpretation of [state] law by the highest court of the State.").

[150] *Gonidakis*, 599 F. Supp. 3d at 692 (Marbley, C.J. concurring in part and dissenting from the remedy).

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Bench Memorandum Writing Sample

This writing sample is an excerpt from a bench memorandum I wrote for the Honorable Chief Judge Algenon L. Marbely in preparation for a hearing on a Motion to Remand during my externship last summer. Chief Judge Marbley has approved the use of this memorandum as a writing sample. The case number is redacted, and all party names are altered in accordance with his instruction. This work was lightly edited by one of Chief Judge Marbley's clerks, but all the writing and research it contains is substantially my own.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES SMITH and JENNIFER SMITH,	:	**Case No. [REDACTED]**
Plaintiffs,	:	**Chief Judge Algenon L. Marbley**
v.	:	**Magistrate Judge Elizabeth P. Deavers**
BRIAN DOE*, et al.*,	:	
Defendants.	:	

BENCH MEMORANDUM[1]

This matter is before this Court on Plaintiffs' Motion to Remand to State Court (ECF No. 7) and Defendant Brian Doe's Motion to Realign Parties (ECF No. 16).

*[For the reasons that follow, it is recommended that this Court **DENY** Plaintiffs' Motion to Remand and **GRANT** Defendant Doe's Motion to Realign Parties.]*

I. BACKGROUND

On July 30, 2021, Plaintiffs Jennifer Smith and James Smith commenced this action by filing a Complaint in the Court of Common Pleas of Fayette County, Ohio, naming Brian Doe; FAC Rentals, LLC ("FAC"); Ohio Insurance Co. ("Ohio Insurance"); and HealthHelp as Defendants. (ECF No. 2).[2] Plaintiffs allege that, on June 4, 2021, Doe, while driving a vehicle

[1] The Honorable Chief Judge Algenon L. Marbley has approved the use of this memorandum as a writing sample. The case number is redacted, and all party names are altered in accordance with his instruction.

[2] Plaintiffs identified themselves as "residents of Fayette County, Ohio" (*Id.* ¶ 2); Defendant FAC as "a foreign limited liability company registered in the State of Oklahoma, Entity No. 3712222432, and licensed in the State of Ohio, registered with the Ohio Secretary of State as Entity No. 1846079, with its principal place of business located in Delaware but regularly doing business in the State of Ohio" (*Id.* ¶ 4); Defendant Ohio Insurance as "licensed" and having its "principle [*sic*] place of business" in Ohio (*Id.* ¶ 5); and Defendant HealthHelp as "licensed" in the State of Ohio (*Id.* ¶ 6).

rented from FAC, rear-ended Plaintiffs' vehicle, driven by Mrs. Smith at the time, causing personal and property damages. (*Id*. ¶ 1). Those damages include personal injuries to Mrs. Smith; loss of consortium with her husband, Mr. Smith; and total loss of their vehicle. (*Id*. ¶¶ 11–14, 16, 18).

[DESCRIPTION OF PLAINTIFFS' ASSERTED CLAIMS EXCLUDED FOR BREVITY]

On September 16, 2021, Ohio Insurance answered the Complaint, denying liability. (ECF No. 4). On October 19, 2021, FAC answered the Complaint, admitting it holds title to the vehicle allegedly driven by Doe but otherwise denying liability. (ECF No. 3). FAC also admitted "that it is a limited liability company organized in the state of Delaware and is licensed to conduct business in the state of Ohio, as Entity No. 1846079," but did not further specify its members or their citizenships. (*Id.* ¶ 4). HealthHelp has not answered the Complaint; Plaintiffs' briefing represents that they were "granted an indefinite extension to answer" while the case was in state court. (ECF No. 7 at 16).

Plaintiffs attempted to serve Doe through certified United States mail on August 2, 2021, at 7008 Beaver Street, Nashville, TN. (ECF No. 7 at 6 & Ex. C). Plaintiffs received a Notice of Failure to Serve from the Fayette County Clerk's Office on September 7, 2021, along with the returned mailing stamped: "Return to Sender. Unclaimed. Unable to Forward." (*Id*.). Plaintiffs requested Fayette County Clerk to re-serve the Complaint by ordinary United States mail. (*Id*. Ex. D). The mailing was resent on September 13, 2021. (*Id*. Ex. E). Plaintiffs had the Fayette County Clerk reissue the Complaint once more by ordinary United States mail on November 3, 2021. (*Id*. Ex. F). On December 17, 2021, Plaintiffs emailed Specialized Insurance Management

("Specialized Insurance"), Doe's insurer, explaining that Doe had been served but had failed to respond, and suggesting a settlement demand in lieu of default judgment. (*Id.* Ex. G).[3]

Doe responds that he never received service of the Complaint. He states the mailings were sent to an address where he had not lived since 2018, and which was not the address he provided to police at the time of the accident. (ECF No. 15-1 ¶¶ 3–5 (Doe decl.)). Doe further alleges that he had no knowledge before December 14, 2021, about the existence of the lawsuit, the identity or citizenship of the members of FAC, or that Plaintiffs were seeking more than $75,000 in damages. (*Id.* ¶¶ 6–8).

On January 13, 2022, Doe removed this case to federal court. (ECF No. 1). In the Notice of Removal, Doe asserts that he is domiciled in and a citizen of Tennessee. (*Id.* ¶ 11). "On information and belief," Doe states that "FAC Rentals is a Delaware limited liability company that is wholly owned by Rent-a-Car, Inc., a Missouri corporation with its principal place of business in Missouri," and, as such, is a citizen of Missouri. (*Id.* ¶ 12). Doe asserts that the amount in controversy exceeds $75,000 (*Id.* ¶ 19), and that FAC consents to removal. (*Id.* ¶ 26).

Following his Notice of Removal, Doe answered the Complaint on January 20, 2022, denying liability and maintaining an affirmative defense of improper service. (ECF No. 5). Plaintiffs filed a Motion to Remand on February 4, 2022. (ECF No. 7). Doe filed in tandem an opposition brief and a Motion to Realign. (ECF Nos. 15 & 16). Plaintiffs filed a consolidated brief in support of remand and opposing realignment (ECF No. 18), and Doe replied in support of realignment (ECF No. 22). Both matters stand ripe for adjudication.

II. LAW & ANALYSIS

[3] Plaintiffs also emailed a copy of the Complaint to Specialized Insurance on August 1, 2021, a day before it first attempted formal service of process.

Under 28 U.S.C. § 1441, a defendant may remove a civil case from state court to federal district court if the federal court would have original jurisdiction over the action. Original jurisdiction may be based either on a federal question or diversity of citizenship. 28 U.S.C. §§ 1331, 1332. Where, as here, federal jurisdiction is based on diversity of citizenship, removal cannot occur if any defendant "is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b). Diversity also must be complete, meaning "all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation." *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 492 (6th Cir. 1999) (quoting *SHR Ltd. Partnership v. Braun*, 888 F.2d 455, 456 (6th Cir. 1989)). Finally, the amount in controversy must "exceed[] the sum or value of $75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a).

If removal occurs, a plaintiff may move to remand the case to state court pursuant to the 28 U.S.C. § 1446. On such a motion, the burden of establishing federal subject matter jurisdiction is upon the removing party—in this case, Defendant Doe. *See Her Majesty the Queen in Right of Province of Ontario v. City of Detroit*, 874 F.2d 332, 339 (6th Cir. 1989) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97–98 (1921)). "Furthermore, because they implicate federalism concerns, removal statutes are to be narrowly construed." *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 757 (6th Cir. 2000) (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941)). "All doubts as to the propriety of removal are resolved in favor of remand." *Coyne ex rel. Ohio v. Am. Tobacco Co.*, 183 F.3d 488, 493 (6th Cir. 1999).

In this case, Defendant Doe removed on the basis of diversity jurisdiction, and Plaintiffs moved to remand. Given the gaps in the record regarding certain jurisdictional facts—specifically, the parties' citizenship and the timeliness of Doe's removal—the Court conducted a motions hearing on July 20, 2022. *See Dunson-Taylor v. Metro. Life Ins. Co.*, 164 F. Supp. 2d 988, 991

(S.D. Ohio 2001) ("The district court has 'wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts' . . . without turning the motion into one for summary judgment." (quoting *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)). The conclusions below follow from the Court's review of the record, as well as the evidence adduced at the hearing.

The issues raised in Plaintiffs' Motion to Remand and Defendant Doe's Motion to Realign raise interrelated issues. As such, the Court addresses them together. The core disputes are: (1) whether Doe's removal was timely; and (2) whether complete diversity of citizenship can be shown and maintained.

A. Timeliness

By statute, a notice of removal "shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. § 1446(b)(1). "The thirty-day period does not begin to run until the defendant is formally served; 'mere receipt' is not sufficient." *Sutton v. Mountain High Invs., LLC*, 2022 WL 1090926, at *2 (6th Cir. Mar. 1, 2022) (quoting *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999)).

In addition to the formal service requirement, for the thirty-day period to begin to run, a defendant must have "solid and unambiguous information that the case is removable." *Berera v. Mesa Med. Grp., PLLC*, 779 F.3d 352, 364 (6th Cir. 2015) (internal quotation marks omitted). If federal jurisdiction is plain from the initial pleading, the clock starts upon service; otherwise, the defendant must file a notice of removal within thirty days after receiving the "paper from which

it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3); *see Berera*, 779 F.3d at 364. Thus, where removal is based on diversity jurisdiction, the thirty-day period begins when, after formal service, the defendant first has "solid and unambiguous information" that each plaintiff's citizenship differs from each defendant's citizenship and the amount in controversy exceeds $75,000. *Id.*; *see* 28 U.S.C. § 1332. A case may not be removed more than one year after its commencement, however, unless the plaintiff has acted in bad faith to prevent removal. 28 U.S.C. § 1446(c)(1).

"The strict time requirement for removal in civil cases is not jurisdictional; rather, it is a strictly applied rule of procedure and untimeliness is a ground for remand so long as the timeliness defect has not been waived." *Seaton v. Jabe*, 992 F.2d 79, 81 (6th Cir. 1993) (internal quotation marks and footnote omitted).

Here, the timeliness issue presents in three forms. First, Plaintiffs maintain that Doe was served pursuant to Ohio law on September 13, 2021, but did not remove the case until January 13, 2022—long after the 30-day deadline. (ECF No. 7 at 7–8). Doe, however, argues that service was made to the "wrong address," so the 30-day clock never began to run. (ECF No. 15 at 14). Second, Doe contends that, even if his service argument was rejected, neither the Complaint nor any other paper or pleading evidenced the membership of FAC, as is necessary to discern the citizenship of an LLC and assess the availability of diversity jurisdiction. (*Id.* at 12–13). Plaintiffs retort that, as FAC is a co-Defendant, Doe "should not be able to take advantage of raising the issue of [its] citizenship." (ECF No. 18 at 7–8). Third, and relatedly, Doe argues that "[t]he only dollar figure is the value of Plaintiffs' vehicle, estimated at $68,000," so nothing in the Complaint clearly and unambiguously showed the $75,000 amount-in-controversy threshold would be met. (ECF No. 15 at 17). Plaintiffs answer that the $68,000 property damage claim,

coupled with the claim for indeterminate medical costs from "emergency room treatment and subsequent treatment at a Level I trauma center," would require a "common sense assessment" that the claims exceeded $75,000. (ECF No. 18 at 10–11).

1. Service of Process

"State rules of civil procedure, like those concerning service of process, apply in state court actions prior to removal to federal court." *Dernis v. Amos Fin.*, 701 F. App'x 449, 453 (6th Cir. 2017) (citing Fed. R. Civ. P. 81(c)(1); and *Wilson v. USDA*, 584 F.2d 137, 140–41 (6th Cir. 1978)). According to the Ohio Rules of Civil Procedure, service of process outside the state on a nonresident of Ohio (like Doe) may be by United States certified or express mail. Ohio R. Civ. P. 1(A), 4.3(B)(1). Since the certified mail envelope attempting service on Doe was returned "unclaimed" (ECF No. 7 at 6), the Clerk mailed a copy of the Summons and Complaint by ordinary United States mail to the same address (7008 Beaver Street, Nashville, Tennessee) upon Plaintiffs' request. *See* Ohio R. Civ. P. 4.6(D). Service is deemed complete when the fact of this ordinary mailing is entered in the record, "provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery." *Id.*[4] Thus, Defendant Doe was considered served when the ordinary mailing was entered in the record on September 13, 2021, and was not returned subsequently. (*See* ECF No. 1-2 (state-court docket), entry of 09/13/2021).

[4] The rationale for this rule is explained in the Ohio Supreme Court case *In re Thompkins*: "The 'Unclaimed' designation implies that the person may in fact reside or receive mail at the designated address but for whatever reason has chosen not to sign for the certified mail. In that situation, a follow-up communication by ordinary mail is reasonably calculated to provide the interested party with notice and an opportunity to be heard. Such a communication, not returned, bears a strong inference that the intended recipient received the letter." 875 N.E.2d 582, 586–87 (Ohio 2007).

Importantly, "the presumption of valid service is rebuttable." *Gaston v. Medina Cty. Bd. of Revision*, 975 N.E.2d 941, 947 n.2 (Ohio 2012). "One way to defeat the presumption that certified-mail service is valid lies in demonstrating a procedural flaw in the service [such as] use of the wrong address." *Id.* at 946. The burden of proof rests on the party claiming service was invalid—and it "is a heavy one." *Id.* at 947. Ohio state courts have found an evidentiary hearing can be appropriate, or even required, to "weigh the credibility of the parties' positions." *Tax Ease Ohio, LLC v. Richards*, 2019-Ohio-5059, 150 N.E.3d 378, 380 (Ohio Ct. App. 2019).

Doe argues that the mailed service was sent to the wrong address and submits a Declaration in support. (ECF No. 15-1). Doe declares he has not lived at the Beaver Street address "since the spring of 2018," and that he "provided [his] current address" to the police officer when the accident occurred. (*Id.* ¶¶ 3–4). Plaintiffs do not directly refute Doe's Declaration, but they do suggest that the Beaver Street address was used for service because it was specified on the crash report. (ECF No. 18 at 8). **[*Confirm in testimony whether the crash report lists Beaver Street, and if so, why.*]** Plaintiffs further question Doe's credibility, pointing out that the Declaration states Doe has not "*regularly* received mail" at the address since the accident, which alludes that Beaver Street might have remained a part-time address for Defendant Doe when service occurred. (*Id.*) **[*Confirm in testimony whether Doe maintained any presence at Beaver Street.*]**

"[U]ncontradicted sworn testimony that [a party] never received service of the complaint," coupled with some proof of non-residence at the service address, can be sufficient to rebut the presumption of service. *G. Lieu, Inc. v. E. Const. & Remodeling, LLC*, 2016 WL 11359492, at *3–4 (Ohio Ct. C.P. Oct. 3, 2016), *aff'd*, 2018 WL 332998 (Ohio Ct. App. Jan. 9, 2018). An uncontroverted affidavit also may be sufficient. *See, e.g.*, *Clawson v. Heights*

Chiropractic Physicians, LLC, 2020 WL 6816986, at *1 (Ohio Ct. App. Nov. 20, 2020), *appeal docketed*, 164 N.E.3d 477 (table) (Ohio 2021). Specific documentation of a formal change of address with the postal service is not a necessity, and the Court can give weight to commonsense considerations such as the time limits on mail forwarding. *Blon v. Royal Flush, Inc.*, 2022 WL 2092431, at *7 (Ohio Ct. App. June 10, 2022). Here, Doe has yet to provide his current address; and, notably, his Declaration falls short of sworn testimony or even an uncontroverted affidavit. [*Doe would not carry his burden on the current evidence alone. He needs to provide sworn testimony or some objective proof of address.*]

[*Assuming Doe delivers sufficient evidence and testimony to prove wrong address and that Plaintiffs do not present substantial contradicting evidence,*] The Court finds Doe has sufficiently rebutted the presumption of service and has shown that the service address used by Plaintiffs was ineffectual. As such, the thirty-day removal clock never began to run since Doe was not served properly pursuant to Ohio law. Defendant Doe's removal therefore was timely.

Though the parties raise other arguments regarding Plaintiffs' email correspondence with Doe's insurer, Specialized Insurance (*see* ECF No. 7 at 8; No. 15 at 18–19), the Court need not consider any agency issues because email receipt of the Complaint would not be sufficient to trigger the 30-day removal period. The Supreme Court has rejected the "receipt rule," and requires "formal service" for the removal clock to begin. *Murphy Bros.*, 526 U.S. at 348, 356. Email is not an acceptable method of service under Ohio law, so the communications with Specialized Insurance cannot constitute proper service. *See* Ohio R. Civ. P. 4.1. As such, Specialized Insurance's receipt of the Complaint via email is inconsequential to the timeliness of Doe's removal.

2. Information about Parties' Citizenship

Even if Plaintiffs' service upon Defendant Doe was perfected, the thirty-day removal clock would not have begun to run because the complaint did not contain information about FAC's citizenship. As a limited liability corporation, FAC "has the citizenship of each of its members." *Varsity Brands, Inc. v. Star Athletica, LLC*, 799 F.3d 468, 494 (6th Cir. 2015) (quoting *Delay v. Rosenthal Collins Grp., LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009)). Plaintiffs' Complaint did not state any information about FAC's members or their citizenship; in fact, it seemed to misapprehend the rule for LLCs by stating allegations about FAC's place of registration and principal place of business. (ECF No. 2 ¶ 4). FAC's Answer likewise contained no information about its members or their citizenship. (ECF No. 3 ¶ 4).

The Sixth Circuit has held that, where defendants did not have access to an LLC's citizenship "either in the pleadings and papers provided by [plaintiff] or in public records," the thirty-day removal clock did not begin to run. *Forest Creek Townhomes, LLC v. Carroll Prop. Mgmt., LLC*, 695 F. App'x 908, 913 (6th Cir. 2017). Like the defendant in *Townhomes, LLC*, Defendant Doe did not have "unambiguous information that the case was removable," *Id.*, since information pertaining to FAC's membership was absent from all pleadings or papers and likewise is not available publicly. **[*In the hearing, confirm Doe's source for FAC Rentals, LLC's membership to check it is not available publicly. Our own research found nothing public.*]** That missing information was consequential; if FAC has a member with Ohio citizenship, then Doe would be legally unable to remove the case *regardless* of his efforts to realign Ohio Insurance and HealthHelp, as FAC would continue to share citizenship with the Plaintiffs. Within 30 days of receiving information about FAC's (Missouri) citizenship, indicating federal jurisdiction could be proper, Doe removed it. His removal therefore was timely.

The fact that FAC is a co-Defendant, rather than a plaintiff, like the LLC at issue in *Forest Creek Townhomes*, is not dispositive. In some instances, courts have found it appropriate to charge a defendant with knowledge of a co-defendant's citizenship; but those cases all involve close relationships with shared counsel. *See Tolloty v. Republic Servs., Inc.*, 2012 WL 529881, at *5 (N.D. Ohio Feb. 17, 2012) ("where the defendants share a close relationship and are represented by the same counsel, the parties and joint counsel must make reasonable efforts to 'intelligently ascertain' these facts about themselves, even if not clear from the face of the complaint"); *Praisler v. Ryder Integrated Logistics, Inc.*, 417 F.Supp.2d 917, 921 (N.D. Ohio 2006) (defendant corporation which shared counsel with co-defendant employee was "required to 'intelligently ascertain' the citizenship of [its employee] at the time the case was filed"); *Williams v. Cracker Barrel Old Country Store, Inc.*, 2006 WL 1793614, at *3 (E.D. Ky. June 28, 2006) ("where Defendants are represented by the same counsel, Defendants must reasonably investigate the basis of removal upon receipt of the complaint"). The relationship between FAC and Doe is not sufficiently close as to charge Doe with knowledge of FAC's citizenship. FAC is a third-party rental car company, and Doe apparently did *not* deal directly with FAC in renting the car. (ECF No. 2 ¶ 4; No. 3 ¶¶ 1, 3 (FAC answering that the car was rented to "Evan Eley/Belvedae Productions")). Further, Defendant Doe and Defendant FAC Rentals, LLC are not represented by the same counsel.

Thus, the Court rejects Plaintiffs' argument that Doe is "grasping at straws" to raise this issue of FAC's citizenship. (ECF No. 18 at 8). Information about FAC's citizenship was necessary to evaluate the availability of removal, and Doe acted promptly once he learned it—not from any paper provided by Plaintiff, but by his own investigation.

3. Amount in Controversy

[ANALYSIS EXCLUDED FOR BREVITY]

B. Complete Diversity

Having found Doe's removal timely, the Court next must consider whether diversity jurisdiction is proper in this case. Plaintiffs argue there is not complete diversity of the parties, as Plaintiffs, Defendant Ohio Insurance, and Defendant HealthHelp all are Ohio citizens. (ECF No. 7 at 5–6). Defendant Doe does not contest that jurisdiction is lacking as the parties are aligned currently; instead, he moves to realign Ohio Insurance and HealthHelp as plaintiffs to create and preserve complete diversity. (ECF No. 16).

Before reaching realignment, though, the Court must consider whether Doe has carried his burden of proof to establish complete diversity in the realigned format he proposes. Doe's Notice of Removal alleges all parties' citizenship (save for his own) "[o]n information and belief" (ECF No 1 ¶¶ 10–15); and, prior to the hearing, no evidence had been submitted to verify Doe's claims.[5] The Court raises this issue *sua sponte*. *See Wis. Dep't of Corrs. v. Schacht*, 524 U.S. 381, 389 (1998) ("No court can ignore the [jurisdictional] defect; rather, a court, noticing the defect, must raise the matter on its own."); *see also V & M Star, LP v. Centimark Corp.*, 596 F.3d 354, 356–57 (6th Cir. 2010) (where "current jurisdictional allegations" left it "uncertain that diversity jurisdiction exists," the court "had an obligation to go further" and "should have insisted that V & M establish the citizenship of its partner LLCs").

1. Burden of Proof

As the removing party, Doe has the burden of proof to establish federal subject matter jurisdiction. *Her Majesty the Queen*, 874 F.2d at 339. The weight of federal authority holds that

[5] This is not a problem for Plaintiffs since their citizenships are alleged affirmatively in the Complaint. (ECF No. 2 ¶ 2).

allegations of citizenship made on "information and belief" are insufficient to meet the requisite burden of proof. *See, e.g., America's Best Inns v. Best Inns of Abeline, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992); *Sheikh v. York*, 2011 U.S. Dist. LEXIS 125478, at *6 (E.D. Mich. Oct. 31, 2011) ("[A] mere conclusory statement 'on information and belief' is not sufficient to establish the court's jurisdiction"); *Yount v. Shashek*, 472 F. Supp. 2d 1055, 1057 n.1 (S.D. Ill. 2006) ("Allegations of federal subject-matter jurisdiction may not be made on the basis of information and belief, only personal knowledge."); *but see Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 200 (4th Cir. 2008) (notice of removal carries no higher pleading standard than an initial complaint, though a removing party bears the burden when jurisdiction is challenged).

Here, Doe's allegations "on information and belief" would not be sufficient to maintain federal subject matter jurisdiction. [***At the hearing, Doe must provide adequate documentation or, at a bare minimum, state how he learned the identity and citizenship of FAC's members.***]

[Assuming Doe adduces adequate evidence] The Court is satisfied from the evidence received that complete diversity would be present in the realigned format. Next, the Court will evaluate whether that realignment is warranted.

2. Realigning the Parties

[ANALYSIS EXCLUDED FOR BREVITY]

III. CONCLUSION

*[For the reasons thus stated, Plaintiffs' Motion to Remand is **DENIED** and Defendant's Motion to Realign Parties is **GRANTED**.]*